

PRESS RELEASE

House Armed Services Committee Bob Stump, Chairman

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HOUSE ARMED SERVICES COMMITTEE REPORTS EXPORT ADMINISTRATION ACT

Committee amends H.R. 2581 to ensure that protecting U.S. national security interests is “number one priority” in export control law

Last night, the House Armed Services Committee reported H.R. 2581, the Export Administration Act, as amended on a strong bipartisan 44 to 6 vote. Upon final passage, Chairman Bob Stump, issued the following statement:

“The House Armed Services Committee made an important statement tonight by reporting an Export Administration Act that, first and foremost, protects U.S. national security interests. In the post-September 11 environment, our number one priority in building an effective export control system must be to ensure that sales of U.S. technologies to companies and nations overseas do not do irreparable harm to America’s national security interests.

“When Iraq began a nuclear weapons program, it purchased sensitive technologies from U.S. firms. When China decided to improve its military capabilities, it purchased machine tools and telecommunications equipment from U.S. firms. And when Russia needed supercomputers to refine, test, and improve its nuclear arsenal, it purchased high-power computers from U.S. firms.

“Though it is tempting to believe that those to whom we sell advanced technologies would never use them against us, the reality is that those who oppose America are perfectly willing to use the plows we sell to them as swords against us.

“The committee’s action is a critical step towards taking away the ability of terrorists, rogue states, and unfriendly nations to purchase critical technologies from our nation. To meet this goal, the committee:

- bolstered the Secretary of Defense’s role in creating export control lists and making export license decisions;
- limited the use of ‘foreign availability’ and ‘mass market’ status to prevent the arbitrary deregulation of export controls; and
- strengthened congressional oversight of the export control system.

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“There have been assertions that this legislation will cause great harm to the national economy in the form of lost sales opportunities. Such claims are simply incorrect; in fact, a 1995 Congressional Research Service study indicated that export controls resulted in lost sales that totaled less than one-fifth of one percent of the U.S. Gross Domestic Product. Such costs pale in comparison to the extraordinary importance of protecting our nation’s security.

“As amended by the committee, H.R. 2581 is now a good bill that restores national security interests to the top of our export control considerations.”

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HIGHLIGHTS OF H.R. 2581 AS REPORTED BY THE HOUSE ARMED SERVICES COMMITTEE ON MARCH 6, 2002

As amended by the House Armed Services Committee, H.R. 2581 would restore and strengthen the role of the Secretary of Defense in the export control process. It would also impose additional safeguards to ensure that sensitive dual-use items that could be detrimental to U.S. national security do not fall in the hands of potential adversaries, proliferators of weapons of mass destruction, or terrorists. Highlights of the committee’s recommendations follow:

National Security Control Lists

The bill as amended establishes an effective export control system under which items that could contribute to proliferation, terrorism, or the military potential of other countries would be placed on a National Security Control List (NSCL). The Secretary of Commerce would maintain this list, but items may be added or deleted only with the concurrence of the Secretary of State and the Secretary of Defense. As part of this list, the committee recommends continued use of a Military Critical Technologies List (MCTL), which is currently maintained by the Department of Defense, as a way of ensuring control of those items that are most critical to U.S. military superiority.

The Role of the Secretary of Defense

In response to concerns about the adequacy of the Secretary of Defense’s role in the export control process, the committee recommends strengthening the role of the Secretary of Defense in the export control process in two major areas:

- **Militarily Critical Technologies List.** The Secretary of Defense would have sole authority to establish and maintain a list of dual-use technologies that are critical to the United States maintaining its military superiority and qualitative advantage (e.g., stealth and jet engine “hot section” technologies). Items listed on the MCTL could not be licensed for export without the approval of the Secretary of Defense, and only the Secretary of Defense could add or remove items from the MCTL. Only the President could overrule a decision of the Secretary of Defense regarding this list.
- **Secretary of Defense’s Role in the Dispute Resolution Process.** The committee recommends an interagency dispute resolution process by which an agency that disagrees with a licensing decision may appeal the decision to higher levels, up to the President. No license would be approved until participating departments and agencies reached a unanimous decision, preserving the Secretary of Defense’s ability to object to a license on national security grounds. This requirement for consensus in the licensing process was a key recommendation of the Cox Committee, which investigated technology transfers to China.

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Determinations of Foreign Availability and Mass Market Status

To ensure that “foreign availability” and “mass market” criteria are not expansively applied to allow the export of dangerous technologies, the committee recommends limiting the scope and use of the designations. Specifically, the committee recommends:

- **Determining Foreign Availability and Mass Market Status:** The committee recommends requiring the Secretary of Defense and the Secretary of State to concur with any determination that an item should be exempted from export restrictions due to foreign availability or mass market status. As a result, the Secretary of Commerce can no longer make unilateral determinations based on little or no analysis, a practice that the GAO reports has often occurred in the past.
- **Foreign Availability.** The committee recommends defining “foreign available” items as those that are available to controlled countries from sources outside the United States, including countries participating with the United States in multilateral export controls, and that are available in significant quantity and comparable quality to make controlling the item ineffective.
- **Mass Market.** The committee recommends defining “mass market” items as those that meet a list of requirements determined by the Secretary of Commerce including volume of sales, scope of distribution, ease of shipment, and ease of use without specialized services.

Strengthening of National Security Controls

The committee recommends strengthening national security export controls by broadening the items available for control to encompass those that could contribute to the military capabilities, proliferation activities, or terrorism potential of a country. In addition, the committee recommends closing a loophole in current law to require the President to impose export controls on items controlled by multilateral regime or international obligation.

High-Performance Computer Controls

The committee recognizes the limited utility of the existing measure of computer performance in export licensing - millions of theoretical operations per second (MTOPS). As such, the committee recommends amending current law to require the Secretaries of Commerce, Defense, State, and Energy to jointly develop and implement a process for monitoring high-performance computing exports, including a new definition and metrics for high-performance computing; an ability to assess proposed exports of such items in advance; and the establishment of post-shipment verification procedures to ensure that high-performance computing technology is not diverted to an improper end-use or end-user. Current laws dictating limitations on high-performance computer controls would be repealed sixty days after the President submits a report to Congress on the new process.

Satellite Controls

The committee recommends retaining current law provisions that place primary control over the export of satellites and related items within the State Department.

Congressional Oversight

The committee recommends enhancing congressional oversight of the export control system by requiring the Secretary of Commerce to notify Congress at least thirty days prior to a change being made to the export status of an item on the National Security Control List. In addition, the Secretary of Defense would be required to conduct an assessment of the national security impact of making such a change to the control list.